

# Exhibit 5

## Before Export

---

**From:** "Mark Dillon" <markd@fleming-logistics.com>  
**To:** "Teresa Noa" <TeresaN@Fleming-Logistics.com>  
**Cc:** <rhatch@email.fleming.com>  
**Sent:** Thursday, December 05, 2002 4:56 PM  
**Subject:** Re: 44709

Teresa,

My main concern here is that we appear to be using the Berry database to move not Fleming product but K-Mart product. That leaves us liable for breach of license. Can we wait till January to begin the charges - I expect to have the new database up by then?

At any rate, we should run this by Lex Smith (Fleming lawyer) and inform Brian of the implications if Lex thinks that there is potential fallout.

As for the effects of this arrangement on the data, it should be fine, as it is not creating a dummy job duplicating a job that already has been billed. It is in essence a PO, but not a Fleming PO, if I understand you.

Mark

----- Original Message -----

**From:** [Teresa Noa](#)  
**To:** [Jackie Rio](#) ; [Mark](#)  
**Sent:** Thursday, December 05, 2002 1:38 PM  
**Subject:** 44709

**next status**

**Bill \$300**

**This is a new move that we are charging Kmart for - they were not charged before.**

**They have requested we come pick up this container w/ non Fleming product - to bring back to our warehouse - to put in the Guam container.**

**This move here is for the b/h only \$300**

**You will then see this same job in the Guam container-that you will charge a crossdock fee (two separate moves)**

**Mark - will this affect anything using the same job?**

**Teresa A. Noa  
Logistics Coordinator  
Fleming Companies Hawaii Division  
(808) 682-3302**